

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0289P

Sales and Use Tax

Calendar Years 1995, 1996, and 1997

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ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer manufactures, sells, and installs automated teller machine housings. At audit, it was determined that the taxpayer did not have a use tax accrual system in place and failed to pay tax on fixed assets and miscellaneous expense items. Taxpayer also failed to collect and remit tax on sales to banks where no sales tax exemption certificate was on file.

Taxpayer failed to remit use tax on clearly taxable purchases.

1. **Tax Administration** – Penalty

DISCUSSION

Taxpayer's audit report revealed that it failed to remit use tax on clearly taxable purchases, had no use tax accrual system in place, and failed to collect and remit tax on taxable sales.

Taxpayer previously protested tax assessed for sales to banks that had paid use tax plus delivery and installation charges. A supplemental audit removed those assessments totaling \$3,343.37 in tax to which the taxpayer agrees. Taxpayer protests only the penalty and has submitted the following arguments.

- 1) In the time immediately prior to the audit periods, the taxpayer suffered a substantial fire loss, disrupting business operations. In this same time frame, it incurred unusual turnover in

the controllership position.

- 2) With the resulting turmoil and employee turnover, use tax tracking and reporting were not properly handled. Procedures to properly record and pay this tax were instituted as soon as the company became aware of the problem.
- 3) On the sales tax side, a portion of the assessment involved installation and delivery charges. The company believed that such charges were not subject to the sales tax. Again, as soon as the problem was recognized, procedures were put in place to properly bill and remit these taxes.
- 4) The company fully cooperated in the audit and immediately instituted new procedures for future compliance.
- 5) At hearing, taxpayer also states that use tax was not assessed in fixed assets because it was rental equipment it believed was not subject to tax.

A review of the audit indicates the taxpayer remitted no use tax and had no use tax accrual system in place, therefore, the penalty applies.

Regarding the sales tax, audit has already eliminated the installation and delivery charges that would reduce the penalty on that portion of the audit.

Taxpayer had a prior audit completed on October 11, 1994 that had the same issues as the current audit. No corrections were made; therefore, the negligence penalty applies to both the sales and use tax issues.

FINDING

Taxpayer's protest is denied.